

§ 550.5 Administration of trust powers.

(a)(1) *Responsibility of the board of directors.* The board of directors is responsible for the proper exercise of fiduciary powers by the Federal savings association. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the Federal savings association in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the Federal savings association's trust powers as it may consider proper to assign to such director(s), officer(s), employee(s), or committee(s) as it may designate.

(2) *Administration of accounts.* No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s), or committee(s) to whom the board may have assigned the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the Federal savings association has investment responsibilities, a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in or held for each fiduciary account for which the Federal savings association has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets. The board of directors should act to ensure that all investments have been made in accordance with the terms and purposes of the governing instrument.

(b) *Use of other Federal savings association personnel.* The trust department may utilize personnel and facilities of other departments of the Federal savings association, and other departments of the Federal savings association may utilize personnel and facilities of the trust department only to the extent not prohibited by law.

(c) *Compliance with Federal securities laws.* Every Federal savings association exercising trust powers shall adopt written policies and procedures to ensure that the Federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. Such policies and procedures, in particular, shall ensure that the Federal savings association's trust departments shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(d) *Legal counsel.* Every Federal savings association exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the Federal savings association and its trust department.

(e) *Bonding.* In addition to the minimum bond coverage required by § 563.190 of this chapter, directors, officers, and employees of a Federal savings association engaged in the operation of a trust department shall acquire such additional bond coverage as the office may require.

§ 550.6 Books and accounts.

(a) *General.* Every Federal savings association exercising trust powers shall keep its fiduciary records separate and distinct from other records of the Federal savings association. All fiduciary records shall be so kept and retained for such time as to enable the Federal savings association to furnish such information or reports with respect thereto as may be required by the office. The fiduciary records shall contain full information relative to each account.

(b) *Record of pending litigation.* Every Federal savings association shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of trust powers.

§ 550.7 Audit of trust department.

(a) A committee of directors of the Federal savings association who are independent of its management shall make, or cause to be made, a suitable audit of the association's trust department annually. The audit shall, at a

minimum, ascertain whether the department has internal control policies and procedures in place to provide reasonable assurance that:

(1) Fiduciary activities are administered in accordance with applicable laws and regulations, governing trust instruments, and sound fiduciary principles;

(2) Fiduciary assets are properly safeguarded; and

(3) Transactions are accurately recorded in the appropriate accounts in a timely manner.

(b) The audit shall be conducted in accordance with generally accepted standards for attestation engagements and any other standards established by the OTS. The audit may be conducted by internal auditors, external auditors or other qualified persons who are responsible only to the board of directors.

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§ 550.8 Funds awaiting investment or distribution.

(a) *General.* Funds held in a fiduciary capacity by a Federal savings association awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

(b) *Use by Federal savings association in regular business.* (1) Funds held in trust by a Federal savings association, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust or by local law, be deposited in other departments of the Federal savings association, provided that the Federal savings association shall first set aside under control of the trust department as collateral security:

(i) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

(ii) Readily marketable securities of the classes in which state-chartered corporate fiduciaries are authorized or permitted to invest trust funds under the laws of the state in which such Federal savings association is located; or

(iii) Other readily marketable securities as the Office may determine.

(2) Collateral securities or securities substituted therefor as collateral shall at all times be at least equal in face value to the amount of trust funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by the Federal Deposit Insurance Corporation. The requirements of this paragraph (b)(2) are met when qualifying assets of the Federal savings association are pledged to secure a deposit in compliance with local law, and no duplicate pledge shall be required in such case.

(3) Any funds held by a Federal savings association as fiduciary awaiting investment or distribution and deposited in other departments of the Federal savings association shall be made productive.

§ 550.9 Investment of funds held as fiduciary.

(a) *Private trusts.* Funds held by a Federal savings association in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law. When such instrument does not specify the character or class of investments to be made and does not vest in the Federal savings association, its directors, or its officers investment discretion in the matter, funds held pursuant to such instrument shall be invested in any investment in which state-chartered corporate fiduciaries may invest under local law.

(b) *Court trusts.* If, under local law, corporate fiduciaries appointed by a court are permitted to exercise discretion in investments, or if a Federal savings association acting as fiduciary under appointment by a court is vested with discretion in investments by an order of such court, funds of such accounts may be invested in any investments which are permitted by local law. Otherwise, a Federal savings association acting as fiduciary under appointment by a court must make all investments of funds in such accounts under an order of that court. Such orders in either case shall be preserved with the fiduciary records of the Federal savings association.